

COMMISSIONERS APPROVAL

GRANDSTAFF

ROKOSCH

THOMPSON

CHILCOTT

DRISCOLL

PLETTENBERG (Clerk & Recorder)

Date.....July 17, 2008

Members Present.....Commissioner Carlotta Grandstaff,
Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

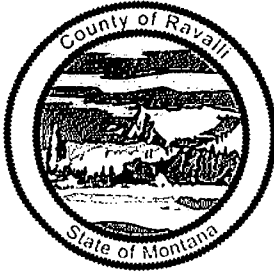
Minutes.....Glenda Wiles

► The Board met for various administrative matters as follows.

- WIC Director Jackie Cenis met with the Board in order to obtain an approval and signature on a WIC contract amendment. This is an additional \$4,050.00 to the WIC Outreach Program which will develop guidelines to be handed out to the Physician's Offices and to pay for a bill board along the Highway 93 Corridor. **Commissioner Chilcott made a motion to have the Chair sign this contract amendment. Commissioner Driscoll seconded the motion and all voted "aye".**
- DUI Task Force Coordinator Glenda Wiles presented her 4th quarter/year end DUI Task Force Report that is required by statute. The report was a recap of the year and last quarter's activities.

► The Board reconvened their public hearing from July 1st on the Lone Pine Estates Subdivision. Present at this meeting was Planner Randy Fifrick, Consultant Jake Kammerer and Beverly Beck who also represented Michel's Development Incorporated. Other citizens were in the audience as well.

Randy presented a letter from Planning Board Member Dale Brown and a memorandum from Planning Staff as follows which addresses Section 2-2-6 MCA; when a postponement of a public hearing occurs with additional information.



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MEMORANDUM
OG-08-07-573

Date: July 15, 2008
To: Board of County Commissioners (BCC)
From: Randy Fifrick
CC: Subdivision file, Outgoing Correspondence File, Kammerer Environmental Consulting, Kraig Michels
Re: Additional Information on Lone Pine Estates

Planning staff received several public comments subsequent to the public hearing on July 1, 2008 for the Lone Pine Estates Subdivision. The hearing on the subdivision has been continued to July 17, 2008 at 10:00 p.m.

Section 3-2-6(b) of the Ravalli County Subdivision Regulations (RCSR) states that when the Board of County Commissioners (BCC) postpones making a decision on a subdivision application and additional information regarding the subdivision is submitted, the BCC shall determine whether public comments or documents presented for consideration at the BCC's public hearing constitute either:

- i. Information or analysis of information that was presented at the public hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public had a reasonable opportunity to comment, in which case the BCC shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
- ii. New information or analysis of information that has never been submitted as evidence, in which case the BCC shall proceed as set forth in Section 3-2-6(c) of the RCSR.

Staff has determined that the information submitted subsequent to the July 1, 2008 hearing is not new information for the following reasons:

1. Information regarding agriculture productivity of the land, moving of the head gate, location of drainage features and Erin Holmes groundwater analysis was discussed in detail at the July 1st meeting. (July 1, 2008 BCC meeting minutes)
2. The additional information does not change staff's recommendation for the subdivision proposal. (Lone Pine Estates Staff Report)

3. All drainage features are located off-site. (Attachment E)

Staff recommends that the BCC review the attached information and make the determination that the additional information presented in support of the subdivision application is not new information and that the public has had a reasonable opportunity to examine and had a reasonable opportunity to comment.

The BCC shall then proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision.

Following is information presented since the July 1, 2008 public hearing:

1. Communication between Randy Fifrick, County Planner and Erin Holmes, Lee Metcalf National Wildlife Refuge Director received July 9, 2008.
Erin Holmes states in an email to Randy Fifrick that she consulted with her regional hydrologist and they have no objections to the proposed project with regards to groundwater. (Attachment A)
2. Supply Ditch Association Meetings for July 7, 2008 received July 15, 2008.
Minutes from the Supply Ditch Association in which the Association approves the moving of the head gate to the North side of the Rosenthal property and the abandonment of the Michel's head gate and sump with the understanding it is to be completely sealed. (Attachment B)
3. Meeting with Doug Hagen on site - 7/2/08 received July 15, 2008.
Kammerer Environmental Consultants met with Doug Hagen on site at the proposed Lone Pine Estates subdivision to discuss drainage concerns. The letter is Kammerer Environmental Consulting's summary of their meeting. (Attachment C)
4. Meeting with Jim Hendrickson on site 7/8/08 received July 15, 2008.
Kammerer Environmental Consultants met with Jim Henderickson on site at the proposed Lone Pine Estates subdivision to discuss drainage concerns and the former agricultural activities on the land. The letter is Kammerer Environmental Consulting's summary of their meeting. (Attachment D)
5. Aerial Photo with drainage features received July 15, 2008
Aerial photo with drainage features as drawn by Kammerer Environmental Consulting from onsite meetings with Doug Hagen and Jim Henderickson. (Attachment E)

Randy noted, however since this is not new information, the Board can move into a decision at the meeting today. Jake noted he anticipated people here today that wanted to comment in behalf of the developer, however they have not arrived yet.

Randy stated he has received six new comments from the last meeting date. They are:

- A letter from Erin Holmes of the Wildlife Refuge stating they have no objections to the subdivision
- Minutes from the Supply Ditch which confirms they have no issues

- Doug Hagen who stated Jake did an on site visit with them to address drainage concerns
- A meeting that occurred with Mr. Jim Hendrickson and Jake in regard to water
- An aerial photo
- A letter from Planning Board Member Dale Brown who had public comment.

Randy noted the criteria were reviewed at the last meeting, with criterion #4 and #6 not being voted on. Since Commissioner Driscoll was not present at the last meeting and she is here today, they will need to review the six criteria again.

- In regard to the effects on Agriculture: Randy stated the consultants offered \$1,000 prior to final plat approval.

Commissioner Thompson asked if they are going to open public comment.

Commissioner Grandstaff stated public comment is closed but the Commissioners can make that decision today if they want to allow further public comment today. It was noted the people who wanted to make comment were now present. Commissioner Grandstaff then re-opened public comment.

Jake Kammerer relayed in state law and in the Ravalli County Subdivision Regulations there are certain criteria. He stated he is not sure Planning Staff is properly advising the Commissioners when they are or are not following the regulations.

Doug Soehren stated he is concerned over his constitutional rights for a clean and healthy environment. The Commissioners are to help the environment, and to improve it. Over the last 1 ½ years he and others have heard a lot of reports from DEQ and Water Resources that say these important qualities are going down hill over the past few years. This is due in large part to the increased load of subdivisions and population growth the subdivisions allow and encourage. He stated in light of the fact there has been so many subdivisions over the past 80 years that have not been built out and the subdivisions must be stopped. When the Commissioners get sued it costs money through a deductible billing. He hates to see this happen but it is a fact of life. These issues are very important and many have worked long and hard on them. If the Commissioners consider the threat of the developers lawsuit and made a decision to approve the subdivision on that basis, that might make our issues important and we might have to sue also. However, he does not want to do that. He wants the Commissioners to think about the ecosystem and the environment. There is no special interest when it comes to the environment.

Stewart Brandborg of the Bitterrooters for Planning appreciated Doug's comments. He supports the Planning Board findings and stated there is no mitigation for the loss of prime farmland. He asked what \$1,000 buys; this land has high yield crops. There are cumulative impacts and there is strain on emergency services. When the Commissioners approve one subdivision at a time we lose the ability to zone and protect. He feels the county is at a critical process in the zoning. This subdivision is very close to the Lee Metcalf Refuge, and there are impacts to the river and refuge. The refuge is a jewel that

cannot be protected when developed. In regard to the cost of litigation, the Board of County Commissioners has the responsibility of protecting the valley. \$10,000 deductible is a small fraction of what these subdivisions are costing the citizens. The Planning Board has shown the values of the area; make a decision to protect the citizens and what will be lost if you do not deny this proposal.

Jim Hendrickson is a former owner of the property. He stated that this is not good farm land. The upper half of this area is rocks with no top soil. It is tough to make a living on the ground. The electricity cost \$1,000 per month in order to run water on this ground. He tried to farm a couple of years ago and could not afford the second cutting of hay. He had to dump several thousand dollars into fertilizer, and that is not good because it adds nitrates to the water.

Curtis Cook supports the Planning Board recommendation. He stated there are already a lot of subdivided lots in the county that are not being developed. There are several studies in regard to the finances of the county, many problems arise which need money to fix them. The studies show for every dollar in taxes collected from the subdivision, \$1.45 is spent for services and infrastructure needs. That difference needs to be considered when you review the subdivision proposals. There are problems with traffic as he listens to the scanner and hears the accidents on the Eastside Highway. The quality of water is seriously impacted, with possible contamination of aquifer. Put a hold on these subdivisions until the cumulative effect is reviewed.

Brian Waring stated the Board of County Commissioners is 'fraudulently representing the citizens as they got to where they are by vote'. The truth is that this is a development scheme all around the U.S. If this is a limited growth project, the Commissioners would honor '1 for 2'. Commissioner Chilcott made a point of order asking Brian what information he is sharing with them and is it related to the Lone Pine Subdivision. Brian stated the Board has been served cease and desist order in their doors right now. This Lone Pine Subdivision is part of the growth plan which is fraudulently represented as a majority project which is what the Board wanted. The people will resist this.

Jean Kammerer stated Lone Pine Estates Subdivision meets all the county regulations and state law by the books. There are no variance requests. What is being stated today (by Brian), is not the forum for these types of comments.

Christine Hulla stated she is the wife of Skip Rosenthal and they both agree with Jake and they agree with subdivision requests (the diversion for water).

The Board then continued in their review of the six criteria.

- In regard to the effects on Agriculture: \$1,000 is being offered. Jake stated yes, this money will be the developer's final offer as this land is not of statewide importance and it is not prime farm land. Commissioner Rokosch stated this is a matter of interpretation, and the regulations don't specifically say or don't specifically exclude soils of local importance. Jake stated it says in state law they

need to show that. Commissioner Rokosch stated there is a disagreement amongst the board members in this regard for soil mappings and composites, but the majority of the soil types on this property constitute soils of local importance in regard to NRCS. Jake stated he visited with NRCS and JR Iman, both told him what is happening in Ravalli County is not what this program was set up for and they do not support it. There must be further studies if this is not for conservation easements. Commissioner Thompson stated in regard to the Planning Board recommendation; one Planning Board member was not able to vote on this subdivision, i.e., under agricultural; three for, three against and one abstained. Thus the Planning Board recommendation is for non significant. Commissioner Thompson then reviewed the six criteria in the manner that the Planning Board Members voted; which shows some tie votes. It was 4-3 to deny but this one member would have been the tie vote. He learned in Kansas City that there are 525 million farms worldwide and 85% are less than 5 acres. Commissioner Chilcott stated Mr. Hendrickson has significant experience on this property and to suggest otherwise is not correct. Mr. Hendrickson then pointed where the rock and farm land was noting he had to run water constantly, as there was not enough drop in the slope to allow for gravity flow. Commissioner Rokosch stated he appreciates Mr. Hendrickson past experience, but as a Commissioner, he must give pause to future potential in light of gasoline and the bio fuels and other forms of fuel from farm production. One of the crops is dry land crops for nitrogen, therefore we should not have a mind set that grass or alfalfa is the only crop that can be grown. There are other potentials too. Commissioner Grandstaff suggested they vote and asked is \$1,000 adequate? **Commissioner Driscoll, Commissioner Thompson, and Commissioner Chilcott voted sufficiently mitigated. Commissioner Rokosch and Commissioner Grandstaff voted non-sufficient.**

- In regard to the effects on Agricultural Water User Facilities: Commissioner Rokosch stated he would like to hear from Erin (the Director of the Refuge). Erin stated they do not have any concerns for ground water. Commissioner Thompson stated there is no water on the subdivision. The Rosenthals have agreed to move the head gate and no downstream water users will have negative consequences. Commissioner Grandstaff asked if the head gate will be done prior to final plat. Randy stated this relocation will be under condition #14. Commissioner Rokosch asked about the fencing at the Supply Ditch. Jake stated it will be on the boundary line of the property. Randy confirmed that. Commissioner Rokosch asked if there was any correspondence from the Supply Ditch. Jake stated they are not affected as they access from the far side of the ditch. He stated the fencing will start at the toe of the Supply Ditch. Commissioner Rokosch stated he had some issues with this. Jake stated the Supply Ditch (ditch rider and director) had no concerns about this at all. Jake stated it would be odd to take this back to the Supply Ditch if they don't have any concerns, but he would be willing to go to the Ditch as a condition of approval. Commissioner Rokosch asked for a letter prior to final plat making sure the location is proper. Commissioner Chilcott stated if the ditch company doesn't have a problem, it is not the Board of County Commissioners' duty to find a problem. They shouldn't pull issues out of thin air,

which is not due diligence, and based on one County Commission Member they would add a condition? Commissioner Grandstaff stated with Jake's approval they would add this condition. Commissioner Driscoll stated the ditch companies do make comments. Commissioner Thompson stated yes, but they had opportunity and elected not to make any determination. We need to make our decision based on facts, not conjecture. **All voted sufficiently mitigated.**

- In regard to the effects on local services: Randy noted the Commission vote was 2 to 2 on July 1st. Commissioner Rokosch asked about the Eastside Highway loading. Commissioner Driscoll stated MDOT noted they rate the highway an "F" in regard to the level of services. It is at F level per Shane Stack (Engineer from the MDOT). Currently the highway is maxed out until they can put in a roundabout and address other safety issues. This is highway #203 which has a loading of 22,000 cars ADT. Funding for the roundabout will be in 2013 and funding might be an issue at that time. Commissioner Grandstaff asked for the Sheriff Office's narrative and budget to be included in these subdivision criteria. Commissioner Thompson stated the developers already negotiated with the school, and if Board of County Commissioners says this is not enough and School says it is; then who are the Commissioners to say 'the experts don't know what they are talking about'. Commissioner Rokosch states as for an exhibit for the tax share and educating students in Stevensville, he has concern for the tax payers, and he is one of the tax paying citizens in the area of this subdivision. He noted the amount offered and the chart is well below what the tax payers are going to have to subsidize. This is not a fair burden to pass on. Commissioner Grandstaff agrees with that and has a problem with first conveyance as there is not a proper way to track those payments. Commissioner Thompson stated if the school shows they need a certain amount which is more than the chart; will we agree with that too? Commissioner Grandstaff stated the Board will have that option; i.e. to not accept what their study has come up with. Commissioner Chilcott added that option is limited on the upper end. Commissioner Thompson stated the Commissioners need to be very careful due to an arbitrary and capricious ruling, as the experts are saying something else. Commissioner Rokosch stated he does not know what was negotiated, but Exhibit A-5 is factual and Commissioner Thompson should take time to review this. Randy stated condition #8 allows half at filing and half at final plat. Commissioner Rokosch asked if they have majority agreement to final plat or first conveyance. Commissioner Driscoll stated they should start taking money up front because they have no way to keep the money coming in as the lots are developed (first conveyance). Commissioner Rokosch stated there is an impact on general county services that are not addressed. Budget analysis indicates other services at \$250.00 per lot. He asked if there was any consideration for mitigation on that. Jake stated he wanted to address Commissioner Driscoll's concerns on Eastside Highway first. He stated they already have their approach permit from MDOT. Jake stated the residents will pay their taxes, so no on the \$250.00 per lot for general county services. **Commissioner Chilcott and Commissioner Thompson voted sufficiently mitigated. Commissioner Grandstaff, Commissioner Driscoll and Commissioner Rokosch voted non-sufficiently mitigated.**

- In regard to the effects on Natural Environment, this was not voted on at the July 1st meeting as they were waiting on the Lee Metcalf Refuge. With testimony from Erin today that question has been answered. Commissioner Rokosch addressed the prior DEQ submittal for a prior subdivision and it does not abrogate his responsibility to address this submittal. Commissioner Grandstaff reviewed the information from Overlook Trails which is overlaid on this subdivision. Jake stated Sanitarian Morgan Farrell stated a valid application had not been submitted, but that is not correct, as he did submit this application and paid the fee and Environmental Health has this information for review; it addresses water quality. Commissioner Rokosch asked Erin if the Refuge has data. Erin stated the report they received was on nitrates and they submitted this to the Hydrologist. The source was from Jake who included the perk tests and pit holes that were done several years ago. She turned this whole packet over to the hydrologist and they do not have any concerns over ground water. Commissioner Rokosch asked about surface water. Erin stated they had concerns about the drainage but there was some work done to block the drainage that was further south. Commissioner Rokosch asked Jake if the run off from the tile drains enters the Refuge. Jake stated these are wooden drains and none of these affect the refuge due to the distance and flow of the water. Hydrologic flows show nothing could ever interact with the refuge. Erin stated it flows a different way and there is a buffer. Thus they had no concerns about that. Commissioner Rokosch stated he was involved in collecting the data from Three Mile Creek and the refuge does affect the nutrients to the Three Mile Creek. Erin stated they are satisfied with this development, but overall, with the continued and cumulative effects of subdivisions they have concern. Commissioner Driscoll asked about the data. Jake stated it is the most and current data that is available. The soils test pits were from the previous and current subdivision. The monitoring from the wells came from three on site wells, and nitrate sensitivity and phosphate was submitted to DEQ. Jake showed a map with direction of groundwater flow based on a hydrologist report. Commissioner Rokosch stated one impact is on ecosystems. He asked Erin if this residential development has any concerns to the refuge. Erin stated the most important thing to realize is that wildlife is not constricted to boundaries. Some of the comments have to do with lighting, approved plant life etc. Commissioner Rokosch stated he is looking at some of the proposed covenants and asked if those addressed her concerns. She stated after she reviewed those covenants she suggested some issues that would impact the wildlife which has been done. Commissioner Rokosch stated these covenants are recommendations and there is no way to enforce them; such as outdoor cats, and there are no cat police. These are more window dressings and feel goods and which have no reality. **Commissioner Chilcott and Commissioner Thompson voted sufficiently mitigated. Commissioner Grandstaff, Commissioner Driscoll and Commissioner Rokosch voted non-sufficiently mitigated.** Commissioner Chilcott asked what their reasons for not being sufficiently mitigated. Commissioner Grandstaff stated she agrees with Commissioner Rokosch's statements noting these covenants are simply window dressings. Commissioner Driscoll stated as far as the overall effect it will have impact on the

surrounding areas and refuge. More subdivisions have gone in and will probably go in and it is not the best location. Commissioner Grandstaff stated in the interest in time, they have already voted on this, so for any counterpoint discussion there is no relevancy. Commissioner Chilcott stated under #17/vegetation, they are requiring they use minimal fertilizer. But the agricultural producer stated he used tons of fertilizer, so which is better? The farmer who uses a ton of fertilizer or a house that uses minimal fertilizer? Commissioner Rokosch stated these covenants are inadequate. Fertilizer does not always have to be used for other crops. Jake stated he worked with the refuge to present those covenants. The Developer has not had an opportunity to mitigate what the Board concerns are. Jake stated county covenants that are enforceable could work and to please show him some specifics so he can address the mitigation. Commissioner Grandstaff asked how they can ensure there will be no pharmaceuticals in the water. Jake stated there is no viable evidence that pharmaceuticals impose a significant influence and it is not measurable. The EPA has not shown a measurement, so how can he. The Refuge was concerned about lights, so we did full cut off. They were concerned about the one tree, so we won't cut the one tree down. They were concerned about the plants, so we will present to the owners a list of plants they can grow. The Refuge thinks we did address their concerns adequately. Randy recommended a Home Owners Association to police these issues. Jake stated they can do that. Commissioner Grandstaff stated Home Owner Associations are completely unreliable. Jake stated the Stock Farm has a Homeowner's Association which can require a fine if they don't follow the covenants. Commissioner Grandstaff noted most don't do anything; thus there is no assurance of having the covenants followed. Jake stated they could set something up if the Board allows them to mitigate that issue. Commissioner Rokosch stated at that point they could then judge whether that is sufficient or not. Commissioner Rokosch asked Jake when he could expect to have this information presented to them. Jake stated prior to final plat we can have Home Owners Association bylaws etc. which he would have reviewed by an attorney. The Board then held a revote on the sufficiency of mitigation. **With addition of Homeowner's Association Commissioner Chilcott, Commissioner Rokosch, Commissioner Thompson, Commissioner Grandstaff voted sufficiently mitigated. Commissioner Driscoll voted non-sufficiently mitigated.**

- In regard to the effects on wildlife: **Commissioner Driscoll abstained, Commissioner Chilcott, Commissioner Rokosch, Commissioner Thompson and Commissioner Grandstaff voted sufficiently mitigated.**
- In regard to the effects on public health, Randy recapped the width of the trail. It was noted the material to be put down has good density and is approved for the trail. Jake stated they are willing to go 5' instead of the 4'. Give \$500.00 per lot to Three Mile Fire and it would be done prior to final plat. Commissioner Rokosch advised Randy to place the Sheriff's Office budget in the narrative of this proposal. Jake stated there is a cooperative agreement with Stevensville Police Department, Montana Highway Patrol and County that Stevensville would be first responders. Jake talked with those agencies extensively noting Montana Highway Patrol and Stevensville are 5 miles away, not 28 miles away.

Commissioner Thompson stated county deputies are all over the county, not just in Hamilton, thus not being 28 miles away all the time. Commissioner Rokosch stated some of criteria #3 applies to this criterion, like the traffic loading etc. Jake stated that is not true, as he has an access permit for build-out. Commissioner Chilcott stated Commissioner Rokosch is addressing the lots that are not fully built out and are not within the calculations of the full build-outs. Commissioner Driscoll noted the state wants the locals to address this development (traffic loading on the Eastside Highway). Commissioner Grandstaff stated they have asked MDOT these questions such as 'what is too much'. But MDOT says the local guys must figure it out. **Vote: Commissioner Thompson and Commissioner Chilcott sufficiently mitigated. Commissioner Rokosch, Commissioner Driscoll and Commissioner Grandstaff not sufficiently mitigated.** Commissioner Chilcott suggested they give the Developer an opportunity to mitigate this issue. Commissioner Grandstaff stated the level is 'F' on the highway, and it is cumulative. Jake asked if he could bring something back from MDOT noting they have no issue on this subdivision. Commissioner Grandstaff stated she does not know if this traffic issue can be mitigated. The Commissioners have had several conversations with MDOT and they are being told that this is a local land use planning issue. Commissioner Rokosch stated if MDOT can provide an assessment of the build-out that this subdivision is adding to, that would help them make their decision (a calculation of the existing traffic). It was noted the Traffic Engineer Glen Cameron is asking the Commissioners to consider a cost sharing of state route improvements, which could be a means of mitigation. Jake stated if you deny this based on access to Eastside Highway, and then you can never grant another subdivision off of Eastside Highway. Commissioner Grandstaff stated when they ask MDOT when the Eastside is going to be widened for the subdivisions; MDOT states they are not going to widen the highway. Commissioner Driscoll stated funding issues show Montana is a receiving state; i.e., the lack of money coming in. They will simply focus on safety issue, not expanding the roads. Jake asked if the subdivision issues are mitigated, other than the Eastside Highway, how he can address these concerns. And if there is no way to address these concerns how can they approve any more subdivisions. Commissioner Grandstaff stated that is the questions they have asked of MDOT. Commissioner Driscoll stated funding is drying up, that is the issue. Jake stated he is simply trying to find a way to mitigate this and asked to have the opportunity to mitigate this effect. Commissioner Grandstaff stated the Commissioners can not give him an answer because they don't get an answer from MDOT. It is up to the subdivider to offer mitigation; thus the ball is in Jake's court. She stated if they had anything to give Jake they would do that. Discussion is that Jake has until August 5th to mitigate this highway concern. Commissioner Rokosch stated they can give Jake a copy of the letter. The big problem is there is no calculation of the build out that has been done. He will have to see some assessment of that (the empty lots) and how they add to the county. Jake stated he does not think this is possible by August 5th. Commissioner Rokosch stated Jake can ask for an extension. Jake stated based on this, he is not sure he can adequately mitigate their concerns. The Commissioners

have addressed federal funding, which the developer can do nothing about. Commissioner Grandstaff read a part of the Ravalli County Subdivision Regulations which state in part: "*subdividers preference for mitigation*". Jake stated to his surprise, at the pre-application and staff meetings, this was not addressed. This was impossible for us to see what your own staff can not bring out. Jake then let this go to vote noting that he will come to all subdivision hearings in the future and make sure this issue is addressed and part of the mitigation.

Commissioner Thompson made a motion to accept and conditionally approve this subdivision based on the findings of fact and mitigation as put forward by the Board of County Commissioners (with a recap of those mitigation measures/criterion as follows):

- **Agricultural: \$1,000 prior to final plat**
- **Ag water: With a letter from the Ditch Company stating they are pleased with the location of fence(s)**
- **Local Services: \$500.00 per lot split between final plat and first conveyance**
- **Natural Environment: create a Homeowner's Association with by-laws**
- **Public Health and Safety: 5' wide trail.**

Commissioner Chilcott seconded the motion.

Commissioner Thompson, Commissioner Chilcott voted "aye". Commissioner Rokosch, Commissioner Driscoll and Commissioner Grandstaff voted "nay". Motion did not carry. Subdivision denied.

Planner John Lavey was now present and asked about the level of the Eastside Highway being inept. He stated if the issue is too many un-built subdivisions, and the Commissioners are referencing those MDOT reports, they need to be entered into the record, thus this is new information. He asked if they should hold off 45 days to see if it is new information. Discussion included having to re-start the public hearing, or review the criteria, which ever is preferred. Commissioner Rokosch stated it seems that would be new information. Commissioner Driscoll replied yes, if this is new information they should be able to review it. John asked the Commissioners to obtain the level of service report that Shane Stack presented. Commissioner Rokosch stated at the last hearing he asked for the design report on the 8 Mile Bridge and improvements. John stated the information being using to deny this subdivision is 'a report from Shane Stack' and he also suggested obtaining any other information such as accident reports.

John stated they have 45 calendar days for subsequent public hearing and it will not be remanded to the Planning Board as it is still in the hands of Commissioners. Only new information can be considered at that hearing. **Commissioner Rokosch made a motion based on new information entered today, requesting continuation of this hearing no later than 45 calendar days from this date. Commissioner Driscoll seconded the motion. Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll voted "aye". Commissioner Thompson and Commissioner Chilcott voted "nay".**

The hearing was adjourned and will be continued no later than 45 calendar days from this date.

Minutes: Beth Perkins

► The Board met for discussion and decision for adopting a time frame for Zoning Regulations. Present were County Attorney George Corn, Interim Planning Director Renee Lemon, Planner Shaun Morrell, Planner Vanessa Morrell, Planner Randy Fifrick, Planner Tristan Riddell, Planner Jen DeGroot and several citizens.

Commissioner Grandstaff called the meeting to order and requested Shaun to give an overview.

Shaun gave a summary of the attached memorandum. He stated the Planning Department came to the Board back in June with a time line to include completion of the project. Through the workshops, there were some concerns raised about the gap between the expiration of the interim zoning time frame. Some of those concerns were directed towards an influx of subdivision applications without zoning regulations. There is disagreement among the community of the influx happening due to the economy. He stated there is an expectation among some in the community to have the regulations set by the time line. The four options on the table are ignore the deadline and continue working; complete the draft regulations but not adopt; finish the regulations and adopt the regulations and continue the mapping process or adopt the regulations by November and continue the mapping process (provisional zoning designations take effect until maps are adopted). Shaun discussed a fifth option not listed in the memo to finish the regulations and the maps and then adopt by November however Staff does not feel they can finish by designed time line.

Shaun discussed the negative consequences of not meeting the time line. Staff feels option one is in line to the proposal of June 30th and would prefer using it. He then discussed all the options in detail as stated within the memo. (See Attached) He stated any option would also be contingent upon how Draft C is received by the public and any protest provisions.

Shaun stated option four makes the most work with less time. He discussed the preparation of the administrative materials and preparing Staff to administer the regulations. In general with this option, the Planning Staff has many reservations. He suggested the November 7th deadline be extended if possible.

Commissioner Grandstaff opened Board discussion.

Commissioner Rokosch stated in earlier meetings with Clarion, they did have some discussion of the options. He stated option four is much more involved than the others. The meetings conducted provided significant affirmation. He would offer this option for broader details given. The intent all long is to get some measures in place for the growth in this county. He does not believe any of the other options would implement anything as

a tool. He stated we would stand to gain much more with a set of regulations and maps. Draft B is dead. Draft C just came in today and the Board will review it with a fine toothed comb. The question remains how do you implement them? A simple map can define that question. We have taken the time and much effort to get the maps done. There are no more additional resources beyond the budget to get this done and the budget is very constrained this year. Due to the time frame of two years and a quarter of a million dollars, this needs to get done within the time line. The maps get away from possible litigation for density and follow the process of State law. The County Attorney's Office will still need to look at the draft regulations.

Commissioner Thompson stated he has always been an advocate for citizen's input. He discussed the past proposition of 20/20 and how it got voted down due to lack of input. He stated many of the citizens want option one to get a quality product without time line constraints. He discussed some of the concerns he has received from the public about not having the maps completed. This is something that needs to come from the citizens and be in agreement to have a product we can all live with. He discussed legislation viewing proposed bills. He stated option four worries him. He is not sure about Draft C and they may be wonderful but there may also be a down side and need some refining. He worries about making decisions based on what the Board thinks rather than what the citizens think. The citizens should have the option to review and have input. There is the concern of the influx for subdivisions. He is sure we will see an absolute overturn of everything done if it is rushed. He is in favor of option one.

Commissioner Driscoll stated she has been attending meetings since 2000. She stated she appreciates all the effort and time put into this zoning effort. There is a certain time frame when you have look at the input provided and ask where the leadership is? She stated there is a point when you have to say the Board has heard the public comments and now it is time for a decision. She understands where the economy is at. She would like to review Draft C before making a decision.

Commissioner Chilcott asked if we do not find the time to do it right the first time then when are we going to find the time to do it right the second time? He discussed the protest provision. He stated the citizens have the right to protest especially when it involves private property rights. The Board has had a lot of input and comments. Some people embrace zoning, some people oppose it. The law states we must consider zoning, not adopt and regulate. He stated he would rather take the time and do it right.

Commissioner Grandstaff stated she agrees with Commissioner Rokosch about spending a quarter of a million dollars and spending two years without a product. She disagrees with Commissioner Thompson regarding 20/20 effort. She would argue with backing up and believes this is the best time to move forward. Over a year ago, she met with consultants and engineers who said this county would not achieve any kind of zoning without outside help. She stated she is in favor of pursuing option four. Her concerns are with the time line and the pressure it puts on the Planning Staff without a Director.

George stated he does not have any comment at this time. He stated the Board needs to discuss this amongst themselves to find agreement. He stated he understands the loss of a Staff member for Planning.

Commissioner Grandstaff stated in replacing the HR Director did take a long time but it was worth it. The next selection process for Planning Director could very well take three months to find the right person.

Commissioner Grandstaff requested any further Board discussion, hearing none, then opened public comment.

Ed Cummings stated the Commissioners should adopt option one. If the Board wants to be entrusted with large matters they should act like they can handle it. This Board is trying to achieve a large goal. He is concerned with the petition to revoke the Growth Policy and the Planning Office being at their weakest point with the loss of Karen Hughes. He stated it is no question the Commissioners did not read Draft B prior to it going out to the public. He further stated lawyers are lined up like airplanes at the airport. He requested the Board build the public trust and a strong Planning Department. Commissioner Grandstaff stated this is the best the Planning Department has ever been. Commissioner Rokosch added Karen Hughes built the Planning Department to be at its best. It will be very hard to replace Karen but the Staff is very capable if handling the work load they are facing. Option four offers a better tool for them to work with. Commissioner Driscoll stated Draft B is in the trash can and Draft C will be looked at thoroughly.

Brian Waring stated The Board based their justification on a fraudulent option by saying the people gave them a mandate on the ballot based on 1 per 2 not for countywide zoning. There was no mention on the ballot of countywide zoning. He stated now the public finds out the Board is going to throw out 1 per 2 by extending the time line. Any one who imagines this is anything but a development scheme is a fool. He stated this is for developers, bankers and politicians. The citizens right to participation in article 2 section 8 states to consider having zoning. He stated this is an abuse of power. This is a misplacement of justice for the unelected people to dictate to the elected officials how to run this county. Brian stated the Board has abused article 2 and article 3 by refusing to acknowledge it is their duty to protect the constitutional right. He stated the Board cannot be trusted. The only option is to resign and resign immediately.

Doug Nation stated he would like to address comment by Commissioner Thompson. He stated if Commissioner Thompson is waiting for the citizens to speak in a unanimous voice, he will be waiting a long time. He is in favor of option four. After the hours put in by the citizens, the county cannot afford to devalue the effort of those engaged citizens.

Terry Nelson requested option six which is to complete it and put it to a vote for the people.

Doug Soehren stated he would like to remind the Board of the level playing field in the valley is the ecosystem. He stated when we are trying to protect that ecosystem, we are trying for everyone. The thrust behind this effort is to put zoning in effect to protect such effort. He encourages the Board to pursue the goal of protecting this special place. He is in favor of option four to allow an extension and still allowing public participation and refine it. He thanked the Board for tackling the large force in Ravalli County. He stated we do have the benefit of hindsight. The conventional wisdom of the last two thousand years did not include global warming and the environment. We have an opportunity to be proactive rather than reactive. He thanked the Board for the courage to be leaders in this historic event.

Curtis Cook stated he was born here and raised in Ravalli County. Since 1916, there has been a lot of change. With option four, it would have something in place to hold down the subdivisions until such time final zoning can be achieved. If the interim zoning term expires, anyone who has a subdivision application can slide in under no restrictions. He stated there are subdivisions taking up all the time of the Planning Department. He stated if we had that time back, we could have finished the zoning long ago. The State statutes place those time restrictions. These people that are subdividing, they don't figure the slow down in the economy. What do we do? We dump it on the table and try to work on it. The reason for option four is to have a hold on what takes place in the county on the interim measure which was put in place by the people. If it ends in November, then you have everything wide open to enable numerous subdivisions. He would suggest a regulation specifying a density on the map or a sundown proposition. This would keep the Board in position of the time line and have control of the county subdivision process. He is in favor of option four.

Laurie Riley stated she lives in Corvallis and believes in the power of the vote and the voices of the citizens. This is something the citizens have voted on. She stated they have voted on the Growth Policy, 1 per 2 zoning and three new commissioners.

Nikki Sardot stated she would like to object to the idea of putting in a "fake" map for option four and go with Terry Nelson's suggestion of a vote. She questioned the spending of \$250,000. Commissioner Rokosch replied it was not actual taxpayer money. He can forward her those numbers. She suggested instead of taking the money for Clarion to do the work, the county should hire additional employees.

Dallas Erikson stated he is from Stevensville and would like the right to vote on zoning. He stated the citizens have voted on different issues but not this. He asked if this "Mickey mouse" zoning is passed and it is challenged and won, they won't be able to do anymore zoning until 2010. George replied if there is a referendum it cannot be brought up for two years. He explained the 90 day leeway of the petition before a time line begins; it could put it on hold and suspend the operation until the referendum.

Ben Hillicoss stated he encourages the Board to proceed and adopt option four because it is the best way to go. Clarion warned there would be a process rejected and there is a lot of misconception of the zoning effort. He would not like to see the effort wasted.

Terry Ryan asked George when he wrote the memo of the owners could vote was percentage was it at for the petition of protest. George replied it is 50% of agricultural and timber landowners and 40% of private landowners. Terry stated as an agricultural owner the map is the most important feature. If the map is not included, she would have no choice but to join the protest effort. She is in favor of Option three.

Jani Summers stated she is in amazement of why option four can be considered. She directed towards Shaun and asked if he feels confident he could get it done. Shaun replied he already stated it would be a strain. Terry stated Clarion stated there is no good plan for agricultural community. Jani stated the Board already got rid of the loggers and then the forest and now you want the get rid of the farmers and ranchers. What is next?

Kevin Floyd stated he no longer lives here but would like to make a comment. He stated the only experience with this he has had is what he has read in the paper and watched on the Planning website. He asked why with all this effort and energy go to waste? He works in research and does not know why the Board could not wait until viewing Draft C before having this meeting. He questioned the Board's ability to handle their schedule. Commissioner Grandstaff stated the Board may or may not make a decision today. Commissioner Rokosch stated in order for all five Commissioners to have a discussion it needs to be in a public forum.

Glenda Edgeworth stated she would like to have the option to vote on this. She would like to know what authority the Board has to continue after the November deadline. Commissioner Rokosch replied the states continuation and the State legislation. George replied under title 76-2-202 under land use. Commissioners are given the authority to adopt zoning measures under a Growth Policy.

Chip Pigman commended the Staff. He stated we do value what they give us and they are being very careful. He read the memo where the Staff recommends extreme caution of option four. Let's not chop them off at the knees. He stated he has heard about the influx of subdivisions. If it is a concern for Planning work load, then subcontract it out. If we as citizens are concerned, we should be able to engage outside resources for the subdivision reviews to keep Staff focused on the goal of countywide zoning. He is in favor of option one.

Roger DeHaan stated he has listened to the comments. He stated he thinks Ed Cummings had a point and it is desirable to minimize the rollercoaster effect. There has been public participation and we are headed in a certain direction. With Draft C, we are going to be heading in another direction. The question is what happens when the time line expires? He stated with option four it would fill the gap with some kind of guidance with a bit more variation. It would be favorable to avoid the roller coaster ride. He asked if it is possible to embellish option one with a limitation of types of subdivisions and types of densities or simply limitations.

Dan Floyd stated we thought the Board was elected to represent the people not elected to implement zoning. He stated if you don't do things correctly it will trigger law suits. He added it turns around the protest period with the map. George stated you can have a protest period on the regulations as well as the maps. He is not sure why everyone is concerned with an influx of subdivision applications. The economy is not in the position to support those homes. He recommended The Board continue for a good set of regulations with public input within a time line. It is the right process.

Commissioner Rokosch stated under any of the options, public process will continue. He discussed the options include a caveat of six month time gap. Quality mapping effort is going to take considerable time and effort. Dan discussed the options presented. Commissioner Driscoll stated it is not anything like 1 per 2. She stated some people think option four is not going to allow subdivisions and that is not true. Dan stated with option four, there is still a need for a good map. He stated the impacts of the properties also have to be taken into effect. He believes the Board is underestimating option four. It is a lot more complicated.

Krista Kanenwisher stated she is concerned with power corruption. Until maps are seen, we are in a moot discussion. She does not know how to come to a decision today without knowing how the maps will look. She hopes there will be serious review and consideration of the consequences of any option.

Rosemary Newman stated she is in agreement with Terry Nelson and wants a vote. She stated she is against zoning. She has not heard about the economy of this valley. Years ago there were lumber mills and now agriculture is being attacked. The only thing left is the construction businesses. Commissioner Grandstaff stated the Board has worked very hard to protect agricultural land. There are provisions in place to protect agricultural land.

Stewart Brandborg of Bitterrooters for Planning stated Bitterrooters for Planning is an advocate for planning. He stated he has watched the loss of prime agricultural land. With the unobstructed development of subdivisions, we must have good economic development in the valley. He stated we have spent more then two years on zoning. He stated within the last minute the Growth Policy was adopted. He stated Commissioner Chilcott came on board and requested the Growth Policy go to a vote. He requested a vote for the people on zoning. He stated he would like to rely on the people who have contributed endless hours towards the zoning effort to vote. He stated there is still a lot of work to do with mapping. He has attended many meetings and the community has an ongoing momentum to succeed in bringing folks to the table. We need to have the community come together and place emphasis on the preservation of agricultural land. How much is the valley going to accommodate for future subdivisions? What about the water tables? He stated he sees a great future with option four and requested zoning going to a vote. He stated there are people in this valley who care. Commissioner Driscoll requested clarification if Stewart requested zoning going to a vote. Stewart replied yes if it comes to that. Commissioner Driscoll replied if you have the protest period, the large landowners have more say in that vote. George stated if the Board adopts zoning there is a protest period. Commissioner Chilcott asked Stewart for clarification he is not afraid of

a vote on zoning. Stewart replied people have been involved in the valley and yes they should not be intimidated if a vote is called for.

Commissioner Rokosch asked about adopting zoning by referendum. George replied the public can enact certain actions by legislative bodies such as the Commission. If the Board adopts it, there would still be a protest period. A referendum could come from the public but it is subject to the same laws. He used an example of the limitations of the ability to raise taxes initiated by the people. Stewart stated he believes there is much depending on the capacity in moving forward and the concerns of the people. He further spoke of public input and protecting land. He stated he had great confidence in the process if the right people are selected to move forward.

George clarified who gets to vote on the Growth Policy such as the exclusion of municipalities. He stated he did receive a letter today regarding the Attorney General's opinion. There is still the question if they could vote on the issue in the referendum but not be included in the protest period. Further discussion followed regarding the letter.

Commissioner Driscoll asked if zoning went to a vote could everyone vote. Commissioner Rokosch questioned Phase II zoning going to referendum. George replied these are questions for the Attorney General. It is too complicated to say yes or no. Commissioner Rokosch questioned the legality of the public including everyone. George stated either way it does not get around the protest period.

Bob Croupy stated what would happen if this was put to a vote? He stated he would assume if there was a vote, it would give the Board more weight in fighting off a protest.

Jenny Stoddard stated she finds the consideration of public comment to be disingenuous. There have been meetings to remove people from the CPCs who were not in favor of zoning, remove a Planning Board member not in favor of the Board's planning process and the cancellation of a meeting to consider a vote. She stated there have been meetings with the agricultural community that want nothing to do with this. That is not the representation of the agricultural community. She recommends option one. She does not believe this Board is representing the people in a whole. She is insulted.

Chris Daniel stated he is in agreement with Stewart Brandborg and wants to put this to a vote.

JR Iman stated three commissioners have indicated a favoritism of option four. In the past months, Clarion has given three drafts and spent \$250,000. He discussed the attempt of Streamside Setbacks, the attempted removal of a Planning Board member, the hold on CPC meetings until Draft C comes out. It appears to him there have been valid attempts in short bursts to accomplish these goals. Given the action of this Board in the past year, unable to come up with regulations. He recommended option one to build the trust of the county with the majority of the people. All you have done is set another unrealistic deadline against the recommendation, again, of the people you hired. He spoke of the bank of subdivision lots. Because of the Commission in power at the time, the

subdivisions in the Lords settlement are still hanging. Those subdivisions happened because people did not have enough insight to do it right the first time. The plan has to be in place before going to hearing. He asked if the Board believes the suggested 30 day deadline is reasonable.

Commissioner Driscoll asked JR with his background in developing and real estate, does he think there will be an influx of subdivisions. JR replied there is always someone who believes they can do it. It takes about three years for any subdivision to be processed and an investment of a half a million dollars. The protest period will not go away. By setting artificial deadlines, it will not accomplish anything. Commissioner Rokosch stated there are not any artificial deadlines here. These are very, very real. There is a deadline to put in place a tool for use in the subdivision review process. He stated we are proposing what kind of guidelines can be used. This Board has seen largely one per two grids with the subdivisions. With option four, it would allow clustering and better design proposals. He stated there are three proposed towns coming down the line. JR replied within the State of Montana, you can have up to five phases within two years. You have allowed developers to come in with 20 phases. If you want development at the measured pace, make those rules. He discussed Aspen Springs having a variance request for 20 phases over 20 years. You need to ask a better question. The question should be sustainability. JR stated there needs to be a better set of questions asked. The creditability of this Board has been lost due to artificial time lines and unrealistic goals.

Susan Pyron stated she is not for zoning because everyone knows what is best for their land. If she is not allowed to build more than one house per 80 acres, then her land value is lost. Is there a program to reimburse people for that loss? She asked for a response. George replied the land has to be deprived of value and then determined on a case by case basis.

Tim Billby stated we voted on this quite some time ago. He does not know why it is going on over and over again. He stated we need to keep the 1 per 2 in place. He discussed a subdivision in the works by a California developer who has money. He stated he does not think it has a lot to do with the landowner but to be aware of the neighbors. He is in favor of zoning.

Lil McAllister asked if the Board has spoken to other counties within the State regarding zoning. Commissioner Grandstaff replied yes, they have spoken to the urban counties who have implemented zoning. Lil stated she moved from California two years ago and would like it to stay the way it is. In Santa Barbara County, several subdivisions went in right after the other. Once zoning is in place, anything can happen. Commissioner Driscoll replied she does see a lot of zoning "refugees" coming to the valley. She stated they are trying to eliminate some of the issues and conflicts. Lil asked about voluntary zoning. Commissioner Driscoll replied it is usually activated when something happens such as storage units, etc. There is currently very little protection for the citizens.

Commissioner Grandstaff stated she is aware of the zoning for Santa Barbara County in California. There has been very little change in Santa Barbara compared to L.A. or San Diego. Lil expressed her concern of the stringent regulations from the zoning.

Commissioner Chilcott presented four emails of comments to be submitted into record. He stated they are all in support of the right to vote.

Brian Waring stated the Board received a cease and desist order from the people. Article Two section one give the people the right and authority to conduct of the government. Article three stated the government can be dissolved. He stated the Board has refused the right of expression and for those reasons, you having broken the oath of your office. In fact, you would be more willing to believe they have the authority to change the date rather than constitutional authority. He stated it is unfortunate so many people, have said it is inaccurate to claim the ballot issue of 1 per 2 to create total valley zoning and then say the cut off date of November is not correct. He asked how the Board can live with themselves. Nothing has changed in the past 14 meetings and questions have not been answered. Commissioner Chilcott stated property owners have the right to protest. Brian stated now is the time for the protest. These are all issues that need to be resolved. He stated he hopes the Board honors the cease and desist order. Commissioner Driscoll questioned the order. George replied if it is not upheld by the Court it is not legal. It is a symbolic gesture.

Curtis Cook stated he is glad he is not under the same constitution as Brian Waring. He stated the zoning in the county is for the unincorporated areas if the county. When the legislature made the provision of certain people are allowed to vote, they said citizen of the county and did specify those who don't get to vote. He believes this is a misguided part from the legislature. The interim zoning ordinance that was put into operation by the petition was voted on by the county and the protest period was specified that the owners of certain land of the county could protest. The residents of the county could protest as well. The AG opinion was not reviewed properly. The reason behind it is clear to him that if you were in Missoula County, all the residents of the county got to vote, they would be controlling the county. As far as a vote at this stage, the zoning law does not provide a vote. They provide a protest period. There is no provision aside from the protest period for a vote at this time by the residents of the county.

Commissioner Grandstaff closed public comment.

Commissioner Chilcott stated his problem with option four is it is still interim zoning. He liked option three and agreed with Chip Pigman's statement. He asked George if the Board could craft a self-limiting language to adopt to give the citizens a sense of security. He thinks Draft C will help the public confidence level for the Board. It shows the Board has been listening. He clarified Clarion provided two drafts not three.

Commissioner Grandstaff suggested the Board review Draft C and hopes to be able to schedule a meeting Wednesday for discussion. She stated she still favors option four. She expressed her concern with the Planning Staff being able to meet the deadline.

Commissioner Driscoll stated she is also in favor of option four. Commissioner Thompson stated he is still in favor of option one and taking the time for public comments. The downside is the possible influx of subdivision applications. He discussed the 87% of land being federal and the restrictive covenants are an additional 8%. Therefore 95% of the land out there can't be developed. He stated he would like to go slow and get the input from the public. Don't rush and understand it is 5% of the county. Commissioner Rokosch stated there is an expressed desire to review Draft C.

Commissioner Rokosch made a motion to continue this meeting until Wednesday July 23rd. Commissioner Chilcott seconded the motion and all voted 'aye'.

7/17/08

Greg Chilcott

From: Jason Bartosik [Jason@bearcubmortgage.com]

Sent: Thursday, July 17, 2008 10:56 AM

To: Greg Chilcott

Hello Mr. Chilcott,

I am unable to attend the meeting today at 1:30. I do wish, however, to indicate that I am opposed to the implementation of gap zoning, and wish all zoning issues now and in the future to go to the voters. I cannot stress that strongly enough. If you have any questions, or wish to discuss these matters further please do not hesitate to contact me at 370-6940.

Thanks for your consideration,

Jason Bartosik
252 Black Lane
Corvallis

Ps Keep fighting the good fight!!

7/17/2008

Greg Chilcott

From: yvonne.m.yorgensen@gskbio.com
Sent: Thursday, July 17, 2008 10:50 AM
To: James Rokosch
Cc: Greg Chilcott; Alan Thompson; Kathleen Driscoll; Carlotta Grandstaff
Subject: zoning

I would like it to be known that I am against the gap zoning and I believe it should be the voters of Ravalli County to decide on zoning issues.

Yvonne M Yorgensen

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7/17/2008

Greg Chilcott

From: diane stephens [dianerps@gmail.com]
Sent: Thursday, July 17, 2008 11:25 AM
To: Randy Fifrick; Greg Chilcott; Carlotta Grandstaff; James Rokosch; Kathleen Driscoll
Subject: Re: Meeting 7-18-08

On Thu, Jul 17, 2008 at 11:22 AM, diane stephens <dianerps@gmail.com> wrote:

My name is Diane M. Stephens---I am a voter---and I oppose "gap" Zoning. I believe the Ravalli County Voters have the right to vote on any zoning issues---I have the right to vote on any Zoning issues. NO one has the Right to tell some one what they can or can not do with their property. I'll be at your meeting 7-18-08 in Hamilton. Thank you

Diane Stephens
7-17-08

7/17/2008

Greg Chilcott

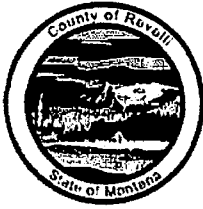
From: John & Vicki Greathouse [jandv@greathouse1.com]
Sent: Thursday, July 17, 2008 9:50 AM
To: Greg Chilcott
Subject: Fw: Gap Zoning!

TO: Greg Chilcott:
FROM: John & Vicki Greathouse
RE: 1:30 p.m meeting today
July 17, 2008 with the
County Commissioners
in reference to adopting
a time frame for Zoning Regulations .

This is to notify that we are unable to attend the above meeting today. We want it on record that we highly oppose "gap" zoning and we insist that Ravalli County voters have a right to vote on any zoning issues. We are opposed to zoning in any way and will continue to spread that word.

John & Vicki Greathouse
239 Martin Lane
Florence, MT 59833
406-777-3930
406-721-8509
406-370-8241
406-370-8242

7/17/2008



Memorandum

Date: July 16, 2008
To: Board of County Commissioners
CC: County Attorney's Office
Clarion Associates
Interested citizens
From: Shaun Morrell, Zoning Coordinator *SM*
Re: Options for addressing challenges associated with the expiration of interim zoning

Overview

In recent weeks, County officials, staff, and citizens have been discussing the proposed alteration and extension of the timeline for the Ravalli County countywide zoning project. This extension could result in a period of time during which no County ("Part 2") zoning would be in effect – from the expiration of Resolution 2038¹ (the "one-per-two" interim zoning regulation) on November 7, 2008, to the adoption of permanent zoning regulations and zoning district maps.

However, some have expressed concern about the challenges that this regulatory "gap" might pose to the County. The concern most frequently cited is a potential influx of subdivision applications during a period when no density restrictions would apply, other than those imposed by voluntary zoning districts and state sanitation regulations. The consequences, therefore, could conceivably include:

- A proliferation of new developments considered by the community to be undesirable for various reasons, including appropriateness of density, and
- Inundation of the Ravalli County Planning Department with subdivision applications, resulting in increased strain on the Department's ability to fulfill its assignments within the County's adopted planning priorities.

Recent public meetings have revealed disagreement within the community as to whether such an influx of subdivision applications is realistic, given existing economic conditions in the housing market and an unpredictable subdivision review process. Historically, however, the imminent adoption of new land use regulations has prompted the last-minute submittal of multiple development applications in an effort to vest these projects in the existing regulatory system. (For example, this tends to occur when subdivision regulations are adopted or overhauled.)

¹ Planning staff has understood interim zoning, as authorized by Montana law, to require the County to conduct, in good faith, studies and hearings in pursuit of permanent zoning regulations – but *not* necessarily to require their adoption. Operating under this assumption, staff considers November 7 to be a target date for the adoption of permanent regulations, but not a deadline by which the County is legally obligated to do so.

Ultimately, projecting the extent of the "influx" problem is an attempt to predict future economic conditions and personal actions on the part of individual landowners and developers. At this time, Planning staff simply acknowledges the presence of some risk in this regard, but does not presume to predict the degree to which the aforementioned problems will occur.

In recent public meetings, the Board of County Commissioners (BCC) has discussed four specific options for addressing the above challenges. Planning staff has evaluated each option for its potential benefits and consequences based on the following factors:

Quality of the proposal vs. timely completion: Each option affects the amount of time that the County staff, officials, and citizens would have to review and revise the proposal for permanent zoning. It is generally presumed that, to an extent, a lengthier timeframe would facilitate more thorough research and discussion in a public forum. However, a longer time span may pass until the regulation's benefits are realized.

Conversely, an effort to complete the proposal in a timeframe that is too short in proportion to its complexity and magnitude may result in a regulation that does not accomplish its intended goals effectively, or is troubled by administrative and legal issues. However, if these problems can be avoided, the regulations would have a more immediate effect.

Protection vs. vulnerability against a potential influx of subdivision proposals: Assuming the possibility (however distinct or remote) of an influx of subdivision proposals during the gap period, each option may or may not provide the community with continuity in the County's transition between interim and permanent regulations. An assessment of vulnerability must take into account the risk of a landowner protest or voter-initiated referendum, which could repeal or prevent the adoption of a zoning measure, and could prohibit the adoption of any zoning for a period of one to two years.

Unresolved questions and other issues to consider: In addition to an assessment of the factors above, Planning staff has also noted several observations and questions that would need to be addressed in order to implement each option.

Some citizens have suggested that the County consider the adoption of permanent zoning regulations and district maps by November 7 as a fifth option. Given constraints in time, staff, and resources, as well as the current state of the proposed zoning district maps, the Planning Department does not consider this to be a feasible option and therefore has not addressed this within the discussion below.

Option 1: Ignore the November target date and continue working on regulations and maps as necessary

Description: Presuming a revised project timeline similar to staff's proposal of June 30, this option would allow continued work on the zoning proposal without regard to the November 7 target date. This option differs from the others in that the timeline for both the regulations and

maps would be crafted around the necessary tasks, as opposed to tailoring tasks to fit within a given deadline.

Quality vs. Timeliness: This option allows continuation of the countywide zoning process on a timeline to be approved by the Board of County Commissioners, which would presumably allow adequate time for the research, review, revisions, and public meetings generally expected for a project of this magnitude. However, many have expressed concern that a repeatedly extended timeline would have detrimental impacts on public participation, as citizens withdraw due to "process fatigue" and a lack of tangible progress.

Protection vs. Vulnerability: This option leaves the County vulnerable to a potential influx of subdivision applications during the gap period, when few or no density, use, or dimensional standards would apply on a countywide basis.

Unresolved questions and other issues to consider:

- While it is debated whether an influx of subdivisions would take place under this scenario, Planning staff advises that the risk of inundation will generally increase as the gap period lengthens.

Option 2: Complete draft regulations by November, but do not adopt them until maps are complete

Description: By November 7, the County's planning team would complete the drafting of zoning regulations, but the BCC would not adopt the regulations until the zoning maps are complete and both components could be adopted simultaneously. This option provides a measure of symbolic compliance with what some perceive as a firm deadline by which the County must complete the countywide zoning project. The discussion below assumes no specific deadline for the adoption of zoning maps; an appropriate mapping timeline would be developed subsequently by the Planning Department and approved by the BCC.

Quality vs. Timeliness: This option essentially establishes an internal deadline by which the draft regulations will be considered "complete." This leaves a relatively brief time period in which to resolve issues previously identified with regard to landowner incentives/options and municipal-County cooperation, in addition to any new issues that may arise upon review of the Draft C regulations. However, given that no public hearing would be required to implement this option, this scenario provides relatively more time for refinement than options 3 and 4.

Protection vs. Vulnerability: This option leaves the County vulnerable to a potential influx of subdivision applications during the gap period, when few or no density, use, or dimensional standards would apply on a countywide basis.

Unresolved questions and other issues to consider:

- Would the draft regulations be strictly static, or left open for future revisions if potential improvements are identified?
- What would be done if the Draft C zoning regulations are poorly received by the general public, or major issues remain to be resolved?

- Would legal and departmental review need to be completed by November 7 to consider the regulations complete?

Option 3: Adopt regulations by November and continue the mapping process (no regulatory effect until maps are adopted)

Description: Under this option, the County would adopt zoning regulations by November 7 in a form that would not take legal effect (i.e., none of the density restrictions, use standards, or dimensional standards therein would apply) until the adoption of zoning district maps. This achieves partial compliance with the perceived November 7 deadline. The discussion below assumes no specific deadline for the adoption of zoning maps; an appropriate mapping timeline would be developed subsequently by the Planning Department and approved by the BCC.

Quality vs. Timeliness: This option imposes a tight deadline by which to resolve issues that have been identified previously with regard to landowner incentives/options and municipal-County cooperation, in addition to any new issues that may arise upon review of the Draft C regulations. Furthermore, unlike option 2, implementation of this option requires a public hearing and a 30-day protest period, meaning that the departmental and legal review would need to be completed by mid-August. This would leave little time for participatory activities of any significance (e.g., Community Planning Committee meetings) prior to the public hearing process. In contrast with option 4, this option provides more time for the preparation of administrative procedures and materials, as the regulations would not actually take effect until maps are adopted.

Implementation of this option by the target date requires that the Draft C regulations, upon their release from Clarion Associates, be very close to what the Commissioners consider acceptable for adoption. Early review (pre-public release) by the BCC, Land Use Subcommittee, and Planning staff, as previously discussed, may need to be abbreviated. Based on the November target date, it will not be feasible to conduct any major overhauls to the draft regulations after the publication of Draft C.

Protection vs. Vulnerability: Although regulations would be adopted by November 7, they would not take effect on any property within Ravalli County until the adoption of zoning district maps defining where the various district standards apply. Therefore, this option leaves the County vulnerable to a potential influx of subdivision applications during the gap period, when few or no density, use, or dimensional standards would apply on a countywide basis.

Unresolved questions and other issues to consider:

- Clarion Associates has previously advised Ravalli County that jurisdictions pursuing similar zoning projects commonly adopt zoning regulations prior to the completion of zoning maps. The process of completing zoning district maps is simplified when citizens and agencies can work with a static set of regulations.
- What would be done if the Draft C zoning regulations are poorly received by the general public, or major issues remain to be resolved?

- If potential improvements to the regulations are identified through the mapping process and continued public involvement, any amendments would need to be made through a formal public hearing and adoption process.
- Legal clarification will be needed to determine how landowner protest provisions apply upon the adoption of regulations without accompanying maps. The June 27 memorandum from the County Attorney's Office points to several ambiguities in the law that have yet to be resolved.
- Based on the target date, is the Ravalli County Attorney's Office able to complete a thorough legal review of the draft regulations prior to the release of a public hearing draft?
- How firm does the BCC consider the November 7 target date to be? If challenges are encountered in the implementation of this option, how long of a regulatory gap, if any, would the Commissioners consider to be acceptable?

Option 4: Adopt regulations by November and continue the mapping process (provisional zoning designations take effect until maps are adopted)

Description: By November 7, the County would adopt zoning regulations that apply provisional maximum densities and other basic development standards through one of the two methods below. The intent of this approach would be to operate under a simplified regulatory structure while continuing to develop more refined zoning district maps. As the refined maps are ready, these would be adopted to replace the provisional standards.

The two methods of instituting provisional designations are as follows:

- A. **Default zoning designations:** A given property would fall under a particular density classification based on the characteristics of the parcel. Zoning designations would not be mapped, but simply described in terms of a set of defined criteria.

To give a very simple and imaginary example of how this might work, one might pretend that the default zoning designation would be based on a parcel's proximity to an incorporated town. Parcels within a distance of, say, one mile from an incorporated town boundary might have a maximum density (for new subdivisions) of one dwelling per X acres, and all properties outside of that radius would have a maximum density of one dwelling per Y acres. A simplified form of use restrictions, dimensional standards, and incentives might be applied to these default designations. The default designations would cease to be effective for a given property once a zoning district map is adopted for the property; the mapped designation would then activate the more detailed density restrictions, dimensional standards, and use standards.

- B. **Simple zoning map:** A provisional zoning district map would be created using a set of basic criteria. As refined zoning maps are completed, they will be adopted and the provisional designations for the newly zoned properties will be discarded.

Of the four options presented here, this option achieves the highest degree of compliance with the perceived November deadline for adoption of permanent zoning. The discussion below assumes no specific deadline for the adoption of refined zoning maps; an appropriate mapping

timeline would be developed subsequently by the Planning Department and approved by the BCC.

Quality vs. Timeliness: This option imposes a tight deadline by which to resolve issues that have been identified previously with regard to landowner incentives/options and municipal-County cooperation, in addition to any new issues that may arise upon review of the Draft C regulations. Furthermore, the County would have to develop a set of criteria and related standards, definitions, etc., in order to have a regulatory effect. If the BCC pursues method B above, the creation of a provisional zoning map would add an additional task.

Like option 3, implementation of this option requires a public hearing and a 30-day protest period, meaning that departmental and legal review would need to be completed by mid-August. This would leave little time for participatory activities of any significance (e.g., Community Planning Committee meetings) prior to the public hearing process.

Implementation of this option by the target date requires that the Draft C regulations, upon their release from Clarion Associates, be very close to what the Commissioners consider acceptable for adoption. Early review (pre-public release) by the BCC, Land Use Subcommittee, and Planning staff, as previously discussed, may need to be abbreviated. Based on the November target date, it will not be feasible to conduct any major overhauls to the draft regulations after the publication of Draft C, and County Commissioners and staff would need to be prepared for a significant commitment of time over the coming weeks to prepare the provisional zoning criteria and related standards. Additionally, as this option would result in regulations becoming effective within a few months, the County would also need to prepare the administrative procedures, materials, and staffing (including the training of both hired personnel and volunteer board members) necessary to implement the provisional regulations.

Of the four options, this approach requires the most work to be accomplished within the shortest span of time – a combination of factors that has historically increased the risk of errors, legal problems, and public frustration. Staff advises extreme caution as the Commissioners consider option 4.

Protection vs. Vulnerability: Of the four options presented here, this is the only approach that results in concrete density, use, and dimensional standards being in place and effective by the November 7 expiration of "one-per-two" interim zoning. However, as such, this option also carries the risk of a landowner protest and/or voter referendum (at two different opportunities – once at the initial adoption, and then again with the adoption of refined zoning maps). A successful protest could preclude the adoption of countywide zoning for a period of one year. A successful referendum could repeal an adopted zoning regulation and prevent its reenactment for a period of two years.

Unresolved questions and other issues to consider:

- What would be done if the Draft C zoning regulations are poorly received by the general public, or major issues remain to be resolved?
- What are the provisional zoning criteria, and how will these criteria be applied to properties in Ravalli County? Within the various default designations, what are the applicable density, use, setback, and height restrictions? What landowner incentives and options will be available to properties under provisional zoning designations?

- Given a limited time for public meetings and consultation with citizens and agencies on the zoning proposal, how should the County gather input?
- In terms of staffing, what resources are available to complete the draft regulations (and, potentially, the provisional maps)? Do the existing resources realistically allow the completion of the proposal by mid-August? If not, what additional resources can be pursued? If it becomes necessary to reallocate Planning Department staff time, which projects, priorities, and/or tasks should receive less staffing?
- Clarion Associates previously indicated some willingness to draft simple language that would accommodate provisional zoning of this nature. This needs to be confirmed.
- Based on the target date, is the Ravalli County Attorney's Office able to complete a thorough legal review of the draft regulations prior to the release of a public hearing draft?
- If method A is pursued, legal clarification will be needed to determine how landowner protest provisions apply upon the adoption of regulations without accompanying maps. The June 27 memorandum from the County Attorney's Office points to several ambiguities in the law that have yet to be resolved.
- If potential improvements to the regulations are identified through the implementation of provisional zoning and the continued mapping efforts, any amendments would need to be made through a formal public hearing and adoption process.
- How firm does the BCC consider the November 7 target date to be? If challenges are encountered in the implementation of this option, how long of a regulatory gap, if any, would the Commissioners consider to be acceptable?
- A "sunset" provision has been suggested by some as a potential variation on this option. Is this the BCC's preference, and if so, what is an appropriate length of time?